



PCS for HOUSE BILL 1015: Economic Devpt. & Finance Changes

2011-2012 General Assembly

Committee:	Senate Finance	Date:	June 5, 2012
Introduced by:	Reps. Howard, Starnes	Prepared by:	Trina Griffin
Analysis of:	PCS to First Edition H1015-CSSVx-46		Committee Counsel

SUMMARY: *The Proposed Committee Substitute for House Bill 1015 would set the rates for the public utility regulatory fees and the insurance regulatory charge for FY12-13 and make the following changes related to economic development:*

- *Removes the cap on the number of grants, which is currently 25, that may be awarded in a calendar year under the Job Development Investment Grant (JDIG) program. It does not change the monetary cap.*
- *Permits the use of Industrial Development Fund moneys for sewer infrastructure projects in adjoining counties.*
- *Broadens the 20-year carryforward period under Article 3J by lowering the investment threshold from \$150 million to \$100 million to the extent an eligible company makes the investment in a tier one county.*
- *Clarifies and extends the time to apply for sales tax refund of aviation fuel.*
- *Makes a technical correction to the definition of a port enhancement zone.*

CURRENT LAW & BILL ANALYSIS:

SET REGULATORY FEES

Section 1 of the PCS for House Bill 1015 sets the rates for the public utility regulatory fees and the insurance regulatory charge for FY12-13. The revenues generated by these provisions are used to defray the State's cost of regulating public utilities, electric membership corporations, and insurance companies. The General Assembly must set these rates each year. The rates are the same as they were last year.

Regulatory Fee for Utilities Commission

Subsection (a) sets the rate for the public utility regulatory fee for fiscal year 12-13 at 0.12%. The rate has not changed since fiscal year 04-05. The utility regulatory fee is a tax that was first imposed in 1989. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating public utilities. The regulatory fee is imposed on all utilities that are subject to regulation by the North Carolina Utilities Commission. The fee is a percentage of the utility's North Carolina jurisdictional revenues. In general, jurisdictional revenue is derived from providing utility service in North Carolina.

Regulatory Fee for Electric Membership Corporations

Subsection (b) sets at \$200,000 for fiscal year 12-13 the annual public utility regulatory fee imposed on electric membership corporations whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale. The rate has not changed since the General Assembly enacted it in 1999. The proceeds of the fee are credited to the Utilities Commission and Public Staff Fund and used to defray the State's cost in regulating electric membership corporations. The 1999 General Assembly enacted S.L. 1999-180, which authorized electric membership corporations to form subsidiary

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corporations that may provide energy services and products, telecommunications services and products, and water and wastewater collection and treatment. The subsidiary must fully compensate the electric membership corporation for its use of the corporation's personnel, services, equipment, and property. The Utilities Commission is charged with regulating this aspect of the subsidiary's business and, to pay for this regulation, S.L. 1999-180 levied a flat-rate regulatory fee to be paid annually by the North Carolina Electric Membership Corporation.¹ Thus, the fee imposed on the North Carolina Electric Membership Cooperation will be passed on to its member electric membership corporations.

Insurance Regulatory Charge

Subsection (c) sets the insurance regulatory charge at 6% for the 2012 calendar year, the same as the rate set for the 2011 and 2010 calendar years. The insurance regulatory charge was first enacted in 1991 to defray the State's cost of regulating the insurance industry. The charge is a percentage of each insurance company's gross premiums tax liability.²

REMOVE CAP ON THE NUMBER OF ANNUAL JDIG GRANTS

CURRENT LAW: The JDIG is a discretionary incentive that provides annual grants to new and expanding businesses measured against a percentage of withholding taxes paid by new employees. A proposed project must meet the following criteria as determined by the Economic Investment Committee (Committee):

- The project results in a net increase in employment.
- The project increases opportunities for employment and strengthens the State's economy.
- The project is consistent with the economic development goals of the State and of the area in which it is located.
- The project is competitive with another state(s) or country.
- The grant is necessary for the completion of the project in North Carolina.

The company must meet certain State health insurance and workplace safety requirements. A proposed project's benefits must outweigh its costs. A cost benefit analysis is done for each project, and the Committee identifies and selects projects that are most beneficial, after considering a number of different evaluation factors.

The Committee may only award a maximum of 25 grants in a calendar year and the total annual amount of the grants may not exceed \$15 million.

BILL ANALYSIS: Section 2 of the PCS would eliminate the cap on the number of grants that the Department of Commerce may award in a calendar year under the JDIG program. It would not change the \$15 million cap on the total annual liability that may be incurred for grants in a calendar year. The purpose of this provision is to provide increased flexibility to the Department of Commerce to award grants to as many companies as are interested and eligible to receive funds from JDIG. This provision was in the House budget (Section 13.6 of HB 950).

EFFECTIVE DATE: This section would become effective July 1, 2012.

¹ The North Carolina Electric Membership Corporation is the only electric membership corporation whose principal purpose is to furnish or cause to be furnished bulk electric supplies at wholesale as provided in G.S. 117-16. It is a "generation and supply cooperative" owned by its members. Its members are all but one of the existing North Carolina electric membership corporations, which are "distribution cooperatives."

² Medical service corporations and health maintenance organizations began paying the charge in 2000.

INDUSTRIAL DEVELOPMENT FUND CHANGES

CURRENT LAW: The Industrial Development Fund (IDF), which is within the Department of Commerce, provides funds to assist local governments in economically distressed counties with creating jobs in certain industries.³ "Economically distressed county" is defined as a county that has one of the 65 highest rankings under the development tier designation.⁴ An eligible industry is defined as a company or person engaged in the business of air courier services, information technology and services, manufacturing, or warehousing and wholesale trade.

The IDF funds must be used for (i) installation of or purchases of equipment for eligible industries; (ii) structural repairs and renovations of buildings for expansion of eligible industries; or (iii) construction of or improvements to new or existing utility lines or equipment or transportation infrastructure for existing or new building for the eligible industries. Other requirements include that the funds have to be used by the city and county governments for projects that directly result in the creation of new jobs and must be expended at a maximum rate of \$10,000 per new job created up to a maximum of \$500,000 per project.

To be eligible for funding, the infrastructure being funded must be located on the site of the building or, if not located on the site, must be directly related to the operation of the specific eligible industrial activity. In all cases, the infrastructure must be located in an economically distressed county.

BILL ANALYSIS: Section 3 of the PCS would modify the eligibility qualification for the funding of sewer infrastructure only by providing that the sewer infrastructure need not be located in the same county as the site of the building where the eligible industrial activity is being conducted. It does not change the requirement that the infrastructure project must be directly related to the operation of the eligible industrial activity.

BACKGROUND: This change would facilitate an economic development project in Davie County. Ashley Furniture is currently upfitting an existing building that requires additional sewer capacity. Forsyth County operates the water and sewer system that serves Davie County and would need to make improvements to the system in order to provide the additional capacity required by Ashley Furniture. Davie County is a tier 2 county and would be eligible for IDF funds. Forsyth County, however, is a tier 3 county and would not otherwise qualify. As applied to this project, the change would enable IDF funds to be used to improve sewer infrastructure located in a tier 3 county to the extent it is directly related to the operation of an eligible industrial activity in a tier 2 county. Forsyth County has indicated that the improvements to the sewer system for purposes of serving the Ashley Furniture site would not enhance sewer service in Forsyth County.

BROADEN THE 20-YEAR CARRYFORWARD PROVISION UNDER ARTICLE 3J

CURRENT LAW: Any unused portion of a credit for creating jobs or of a credit for investing in business property under Article 3J may be carried forward for the succeeding five years. Any unused portion of a credit for investing in real property under Article 3J may be carried forward for the succeeding 15 years. If the Secretary of Commerce makes a written determination that the taxpayer is expected to purchase or lease, and place in service in connection with an eligible business within a two-year period at least \$150 million worth of business and real property, then any unused portion of a credit may be carried forward for 20 years.

³ IDF is currently funded by loan repayments only; there is no longer a General Fund appropriation for IDF. Loan repayments average around \$50,000 annually.

⁴ Under the development tier designation, the 40 most distressed counties are designated as tier 1, the next 40 as tier 2 and the 20 least distressed as tier 3.

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BILL ANALYSIS: Section 4 of the PCS would broaden the 20-year carryforward provision by lowering the threshold from \$150 million to \$100 million worth of business and real property investment for an eligible business that makes the investment in a tier one county. The threshold would remain the same for all other businesses.

EFFECTIVE DATE: This section would become effective for taxable years beginning on or after January 1, 2012.

CLARIFY & EXTEND TIME TO APPLY FOR A SALES TAX REFUND OF AVIATION FUEL

CURRENT LAW: An interstate passenger air carrier is allowed an annual refund of the sales and use tax paid by it on fuel in excess of \$2,500,000. A request for a refund is due within six months after the end of the State's fiscal year. The refund period covers purchases made during the State's fiscal year. Refunds applied for after the due date are barred. The only taxpayer that currently qualifies for this credit is U.S. Airways.

BACKGROUND: This sales tax refund for aviation fuel was originally authorized in 2005. Prior to 2010, the refund period covered purchases made during a calendar year, and the refund application was due within six months after the end of the calendar year. In 2010, the General Assembly enacted legislation, S.L. 2010-166, that consolidated and made uniform sunset and reporting features and requirements across the State's various economic incentives. Among the changes, the due dates of the sales tax refunds were standardized to apply to a fiscal year. The effective date of the legislation specifically provided that, "The first claim for refund by a taxpayer whose sales tax refund period is changed by this act is due within six months after July 1, 2010, and applies to purchases during the time period not covered by the taxpayer's last claim for refund."

There was some confusion associated with this bill. During the same session, there was another bill,^[1] which passed first, extending various sunsets from January 1, 2011, to January 1, 2013. S.L. 2010-166 failed to take into account the extension of the sunsets enacted by the other bill. When S.L. 2010-166 was enacted, it unintentionally nullified the sunset extensions because it was enacted after the first one passed. This error was later corrected in 2011 technical corrections legislation.^[2]

In the midst of the confusion, the transition from filing for a refund on a calendar year basis to a fiscal year basis, which should have occurred in 2010, was overlooked by both U.S. Airways and the Department of Revenue. In February of 2011, U.S. Airways filed for a refund for calendar year 2010 and received it. In January of 2012, U.S. Airways filed for a refund for calendar year 2011 and was told that the claim for the first six months of 2011 was barred due to an untimely application. And the refund request for the second six months of 2011 was not yet due.

BILL ANALYSIS: Section 5 of the PCS does two things. First, it validates the 2010 refund application and payment issued by the Department of Revenue and second, it provides for the transition from a calendar year refund period to a fiscal year refund period. Subsection (a) would validate the 2010 refund payment made on a calendar year basis. Subsection (b) would allow the taxpayer to apply for a sales tax refund for aviation fuel purchased by it in excess of \$1,250,000 between January 1, 2011, and June 30, 2011, so long as the application is made before July 1, 2012. The cap is reduced to reflect the fact that the refund would only be for a six-month period. The fiscal impact of this provision is a reduction of approximately \$6.34 million in State sales tax revenues and \$2.71 million in local sales tax revenues. The provision has a fiscal impact because the taxpayer is not entitled to the refund under

^[1] S.L. 2010-31.

^[2] S.L. 2011-330.

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current law since it filed an untimely application. The fiscal impact has been accounted for in the House budget with corresponding adjustments to General Fund availability.

EFFECTIVE DATE: The provision related to the refund for the first half of 2011 is effective January 1, 2011, and applies to purchases made on or after that date. The remainder of the section is effective when it becomes law.

PORT ENHANCEMENT ZONE TECHNICAL CORRECTION

CURRENT LAW: S.L. 2011-302 created a new type of zone eligible for enhanced credits⁵ under Article 3J, known as a "ports enhancement zone." North Carolina has two State ports, the Port of Morehead City and the Port of Wilmington. The Port of Morehead City is located in Carteret County; Carteret County is a tier 3 county. The Port of Wilmington is located in New Hanover County; New Hanover County is also a tier 3 county.

A ports enhancement zone is an area that meets the following conditions:

- Is comprised of one or more contiguous census tracts, census block groups, or both, in the most recent federal census.
- All of the area is located within 25 miles of a state port and is capable of being used to enhance port operations.
- Every census tract and census block group in the area has at least 11% of households with incomes of \$15,000 or less.

The statute also stipulates that the area of the county that is included in one or more port enhancement zones may not exceed 5% of the total area of the county.

The enhanced credits available to an urban progress zone (UP zone) and an agrarian growth zone (AG zone)⁶ will be available to a ports enhancement zone, effective for taxable years beginning on or after January 1, 2013.

BILL ANALYSIS: Section 6 of the PCS would change one of the three conditions that must be met in order to qualify as a ports enhancement zone. Under the bill, the zone would have to be comprised of part or all of one or more contiguous census tracts, census block groups, or both, in the most recent federal decennial census. Without this language, the areas intended to be covered by this provision would not meet the definition because the relevant tract exceeds the 5% limitation. This change would also make the port enhancement zone definition consistent with the UP zone definition.

EFFECTIVE DATE: This section becomes effective for taxable years beginning on or after January 1, 2013.

⁵ North Carolina seeks to incent businesses to create jobs and invest in business property primarily through Article 3J tax credits. A taxpayer's eligibility for a credit and the amount of the credit varies depending upon the county or zone in which the jobs are created or the investments are made. These credits may be combined to offset up to 50% of the taxpayer's State income and franchise tax liability, and as a general rule, unused credits may be carried forward for up to five years.

⁶ The enhanced credits available to an UP zone or an AG zone under Article 3J are as follows:

- **Jobs tax credit.** – The threshold for new full-time jobs created to qualify for the tax credit for creating new jobs is the same as for a tier 1 county, five ; and the amount of the credit is increased by \$1,000 per job. If the job is filled by a resident of the zone or a long-term unemployed worker, the credit is increased by an additional \$2,000 per job.
- **Machinery and equipment investment tax credit.** – The investment threshold requirement to qualify for the tax credit for investing in business property is the same as a tier 1 county, which is none. The amount of the investment tax credit is also the same as a tier 1 county, 7% of the cost of tangible personal property that is placed in service during the taxable year.

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